

**MINUTES FOR THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT**

October 31, 2006

DIVISION ONE

10-31-06

994501-06

The HONORABLE **FRANK Y. JACKSON**, Judge of the Superior Court of California, County of Los Angeles, is hereby assigned to assist the Court of Appeal, Second Appellate District, Division One, as a justice thereof, on the following dates:

November 1, 2006 to November 30, 2006

and until completion and disposition of all causes and matters submitted pursuant to this assignment including, if necessary by reason of a vacancy or disqualification of a Court of Appeal justice, all petitions for rehearing arising out of such causes and matters.

This assignment does not extend to any matter in which the panel would be composed of two justices pro tempore.

Dated: October 27, 2006

Ronald M. George
Chief Justice of California and
Chairperson of the Judicial Council

DIVISION ONE (Continued)

B187642 American Home of Sciences, Inc. (Not for Publication)

v.

California School of Modern Sciences, Inc., et al.,

California School of Modern Sciences, Inc.,

Toros Yeranosian

The judgment is affirmed in part and reversed in part. The judgment is affirmed as to defendant California School of Modern Sciences, Inc., on the breach of contract claim with respect to liability but not damages. The judgment is reversed as to defendant Alexander Pekarsky on the complaint, as to defendant California School of Modern Sciences, Inc., on the fraud cause of action, and as to both defendants on the findings of malice, fraud, and oppression. The trial court is directed to enter judgment in favor of defendant Alexander Pekarsky on the complaint. California School of Modern Sciences, Inc., is entitled to a new trial as to damages on the breach of contract claim. Cross-complainant California School of Modern Sciences, Inc., is entitled to a new trial on its breach of contract and unfair competition causes of action against cross-defendant Toros Yeranosian. In all other respects, the judgment on the cross-complaint is affirmed. Appellants are entitled to costs on appeal.

Mallano, Acting P.J.

I concur: Jackson, J. (Assigned)

I concur in the judgment only: Vogel (Miriam A.), J.

B184513 California Podiatric Medical Assoc. et al. (Not for Publication)

v.

Kaiser Foundation Health Plan et al.

The judgment is affirmed. Respondent(s) to recover costs.

Vogel (Miriam A.), J.

We concur: Mallano, Acting P.J.

Jackson, J. (Assigned)

DIVISION ONE (Continued)

B186376 Sherra Lynne Ewing (Not for Publication)

v.

Gary B. Gelfand et al.

The July 28, 2005 order is reversed. The trial court is directed to grant plaintiff Sherra Lynne Ewing's motion for relief subject to such conditions as may be just under Code of Civil Procedure section 2033.300. The parties are to bear their own costs on appeal.

Mallano, Acting P.J.

I concur: Jackson, J. (Assigned)

I concur in the judgment only: Vogel (Miriam A.), J.

B183511 Dorene Lines-Waldrep (Not for Publication)

v.

Los Angeles Unified School District et al.

The judgment is affirmed. The District and Manrique are awarded their costs of appeal.

Vogel (Miriam A.), J.

We concur: Mallano, Acting P.J.

Rothschild, J.

B181574 People (Not for Publication)

v.

Green-Davis

The judgment is affirmed.

Jackson, J. (Assigned)

We concur: Mallano, Acting P.J.

Vogel (Miriam A.), J.

DIVISION ONE (Continued)

B190647 Long Beach Community College Dist. et al. (Not for Publication)
v.
Superior Court, Los Angeles County
(Daniel McCullough et al., r.p.i.)

Let a writ of mandate issue directing the Superior Court to vacate its order denying petitioners' motion for summary judgment and to enter an order granting the motion. Petitioners are to recover costs on appeal.

Jackson, J. (Assigned)

I concur: Vogel (Miriam A.), J.
I dissent: Mallano, Acting P.J. (Opinion)

B182226 Tesoriero (Not for Publication)
v.
Tesoriero

The judgment is modified by (1) clarifying that Discount Bird is to be immediately listed for sale for \$250,000, without a noncompetition clause, and with a provision that either John or Rochelle may purchase the business without payment of a commission, and that the proceeds of the sale are to be credited equally to the parties; (2) providing that the Reseda real property is to be immediately listed for sale and the proceeds credited equally to the parties; (3) clarifying that the sale of Discount Bird is separate and distinct from the sale of the Reseda property and vice-versa; and (4) providing that the proceeds of the Nextel lease (accumulated and future, if any) are to be credited equally to the parties. As modified, the judgment is affirmed and the cause is remanded to the trial court with directions to make such other orders as may be necessary to implement the judgment (as modified). The parties are to pay their own costs of appeal, including attorneys' fees.

Vogel (Miriam A.), J.

We concur: Mallano, Acting P.J.
Rothschild, J.

DIVISION ONE (Continued)

B187858 Tesoriero (Not for Publication)

v.

Tesoriero

The order is affirmed. The parties are to pay their own costs (including fees) of appeal. The Clerk is directed to mail copies of this opinion and the opinion in *In re Marriage of Tesoriero* (Oct. 31, 2006, B182226) [nonpub. opn.] to the State Bar of California.

Vogel (Miriam A.), J.

We concur: Mallano, Acting P.J.
 Rothschild, J.

B186273 People (Not for Publication)

v.

Frias

The order is affirmed.

Vogel (Miriam A.), J.

We concur: Mallano, Acting P.J.
 Jackson, J. (Assigned)

B183591 City of West Covina (Not for Publication)

v.

Valencia Heights Water Company

The order is affirmed. Valencia Heights is awarded its costs of appeal.

Vogel (Miriam A.), J.

We concur: Mallano, Acting P.J.
 Jackson, J. (Assigned)

DIVISION ONE (Continued)

B175888 People v. Castellanos (Not for Publication)
B181286 In re Castellanos on Habeas Corpus

The judgment is affirmed. The petition is denied.

Vogel (Miriam A.), J.

We concur: Mallano, Acting P.J.
 Rothschild, J.

B187612 People (Not for Publication)
 v.
 Cleveland

The judgment is affirmed.

Rothschild, J.

We concur: Mallano, Acting P.J.
 Vogel (Miriam A.), J.

B188711 Robyn R. Tunstall (Certified for Publication)
 v.
 Elizabeth H. Wells

The order is reversed. Appellant Elizabeth shall recover her costs on appeal.

Rothschild, J.

We concur: Mallano, Acting P.J.
 Jackson, J. (Assigned)

DIVISION ONE (Continued)

B185487 People (Not for Publication)

V.

Brown

The findings that Brown’s 2001 assault conviction constituted a “serious” and “strike” felony (§ 667, subds. (a)-(i)) are reversed and the sentence is vacated. The case is remanded for a retrial on the 2001 assault prior conviction allegations if the People so elect, or for resentencing if the People do not so elect. In all other respects, the judgment is affirmed.

Rothschild, J.

I concur: Mallano, Acting P.J.

I concur: Vogel (Miriam A.), J. (opinion)

B186235 Baber et al. (Not for Publication)

V.

Quizno's et al.

The order is affirmed in part and reversed in part. On remand, the trial court shall grant the petition to compel arbitration in its entirety, ordering that the arbitration be conducted in Denver, Colorado, upon application to the American Arbitration Association. The parties are to bear their own costs on appeal.

Mallano, Acting P.J.

In concur: Jackson, J. (Assigned)

I concur in the judgment only: Vogel (Miriam A.), J.

DIVISION ONE (Continued)

B188408 People (Not for Publication)

V.

Eric S.

The judgment is affirmed.

Vogel (Miriam A.), J.

I concur: Jackson, J. (Assigned)

I concur: Mallano, Acting P.J. (Opinion)

DIVISION TWO

B183481 Rodriguez (Not for Publication)

V.

PCH Logistics, Inc.

The order dismissing this case with prejudice is affirmed. Respondent(s) to recover costs.

Doi Todd, J.

We concur: Boren, P.J.

Chavez, J.

B188590 Garamendi (Not for Publication)

V.

Woolls et al.

The judgment is affirmed. Each party to bear their own costs.

Doi Todd, J.

We concur: Boren, P.J.

Ashmann-Gerst, J.

DIVISION THREE

B182919 People (Not for Publication)

V.

Michael A. Menchaca

The judgment is affirmed.

Aldrich, J.

We concur: Klein, P.J.

Croskey, J.

B188192 People (Not for Publication)

V.

Michael Allen Gaines

The judgment is affirmed.

Aldrich, J.

We concur: Klein, P.J.

Croskey, J.

B186939 Debra Kay Pryde

V.

Richard Jackson Cronan

Filed order modifying opinion. (No change in the judgment)

DIVISION FOUR

B184847 People (Not for Publication)
v.
Vega

The judgment is reversed and the matter remanded for retrial.

Willhite, J.

We concur: Epstein, P.J.
Manella, J.

B180149 T.D. Service Co. (Not for Publication)
v.
Valerie Hudson Gurich
Westwood Royale HOA

The orders granting summary judgment and awarding attorney fees are reversed. Gurich is to have her costs on appeal.

Epstein, P.J.

We concur: Willhite, J.
Manella, J.

DIVISION FIVE

Court convened at 9:00 a.m.

Present: Turner, P.J., Armstrong, J., Mosk, J. and C. Adams, Deputy Clerk.

Each of the following:

B186152	People v. Balkin
B188362	People v. Hermes Guillen
B1187567	People v. Miguel Carreon

DIVISION FIVE (Continued)

Each of the following (continued):

B193689 DCFS v. Kathy M., et al.

Argument waived, cause submitted.

B190433 Alice Adams
 v.
 Saatchi & Saatchi North America

Merits:

Argued by Michael J. Faber for appellant and Joanie L. Roeshlein and Frank M. Libertore for respondent Saatchi & Saatchi North America.
Cause submitted.

B183585 Finis Welch v. Ocean Towers
 v.
 Ocean Towers

Merits:

Argued by John B. Marcin for appellant and by Edmund Schaffer for respondent. Cause submitted.

B181476 Finis Welch
 v.
 Ocean Towers

Merits:

Argued by John B. Marcin for appellant and by Edmund S. Schaffer for respondent. Cause submitted.

DIVISION FIVE (Continued)

B187638 Brian Murphy
 v.
 Same Day Air Couriers of Illinois

Merits:

Argued by Sean Daniel Simpson for appellant and by Richard Tanzer for respondent. Cause submitted.

Court recessed at 10:36 a.m.

Court reconvened at 11:00 a.m.

Present: Turner, P.J., Mosk, J., Kriegler, J. and C. Adams, Deputy Clerk.

Each of the following:

B188698 People v. Rayshun Wyrick
B191358 DCFS V. Mark R. et al

Argument waived, cause submitted.

B186769 Paul Cohen
 v.
 Carpenter & Zuckerman, et al

Merits:

Argued by Paul Cohen for appellant and by Candice S. Klein for respondent. Cause submitted.

DIVISION FIVE (Continued)

B186557 People
v.
James Burnett

Merits:

Argued by Katharine Eileen Greenebaum for appellant and by Juliet H. Swoboda, Deputy Attorney General for respondent. Cause submitted.

Court adjourned.

DIVISION SIX

B187885 Hicks (Not for Publication)
v.
George Valverde, as Director. etc.,

The judgment is affirmed. Costs are awarded to respondent.

Coffee, J.

We concur: Yegan, Acting P.J.
Perren, J.

B190509 People (Not for Publication)
v.
Johnson

The judgment is affirmed.

Yegan, J.

We concur: Gilbert, P.J.
Coffee, J.

DIVISION SIX (Continued)

B186197 People (Not for Publication)
v.
Horner

The conviction of aggravated arson in count 1 is affirmed. The conviction of aggravated arson in count 2 is modified to simple arson of property under section 451, subdivision (d). The direct restitution order shall be reduced to \$658,563 for the property at issue in count 1 and to \$198,681 for count 2. The case is remanded for a new sentencing hearing so the trial court can determine the appropriate sentence on count 2. Should the People request, the court shall also consider whether additional amounts of restitution should be ordered to compensate Pacific Builders for lost profits associated with rebuilding the homes.

Coffee, J.

We concur: Gilbert, P.J.
Yegan, J.

B182712 People
v.
Valentine

Filed order denying petition for rehearing.

DIVISION SEVEN

B170885 People
v.
Romero et al.,

Respondent's request for judicial notice is granted. Filed order modifying opinion. Petition for rehearing is denied. (No change in the judgment)

DIVISION SEVEN (Continued)

B185832 Barile
 v.
 Cage-Barile

Filed order denying petition for rehearing.

B192200 In re Jonathan R., et al., minors
 Los Angeles County, D.C.S.
 v.
 Robert B.

Filed order denying petition for rehearing.

DIVISION EIGHT

B183821 The Cadle Company (Certified for Publication)
 v.
 Word Wide Hospitality Furniture, Inc. et al.

The judgment against Hospitality is reversed and the matter remanded for trial as to Hospitality. The judgment against Gonshor is affirmed. However, in the event judgment on remand is in favor of Hospitality or it is found liable in an amount less than the judgment against Gonshor, and the judgment against Gonshor is not satisfied, the trial court is directed to vacate that judgment and enter a new and different judgment consistent with the judgment in the trial between Cadle and Hospitality. The order waiving jury trial and denying the statute of limitations defense are affirmed. The order awarding attorney's fees is reversed. Each party is to bear his or its own costs of appeal.

Boland, J.

We concur: Rubin, Acting P.J.
 Flier, J.

DIVISION EIGHT (Continued)

[illegible]

The judgment is modified by staying the three-year enhancement imposed on count 1 under section 12022.7, subd. (a). As so modified, the judgment is affirmed. The superior court shall prepare and transmit to the Department of Corrections an amended abstract of judgment, reflecting the foregoing modification of judgment and sentence.

Cooper, P.J.

We concur: Rubin, J.
Boland, J.

B183952 Fountain Park Cooperative Inc., (Not for Publication)
v.
Lavelle

The judgment is affirmed.

Cooper, P.J.

We concur: Rubin, J.
Boland, J.

B185442 People (Not for Publication)
v.
Alvarez

The judgment is affirmed.

Flier, J.

We concur: Cooper, P.J.
Boland, J.

October 31, 2006 (Continued)

DIVISION EIGHT (Continued)

[illegible]

The order extending appellant's MDO commitment until July 9, 2006, is affirmed.

Flier, J.

We concur: Cooper, P.J.
Boland, J.

B186402 Daugherty et al. (Not for Publication)
v.
American Honda Motor Co., Inc.,

The judgment is affirmed. Respondents are to recover their costs on appeal.

Boland, J.

We concur: Rubin, Acting P.J.
Flier, J.